

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JOSEPH PILCHESKY,</b>	:	
<b>Petitioner</b>	:	<b>CIVIL ACTION NO. 3:18-1995</b>
<b>v.</b>	:	<b>(MANNION, J.)</b>
<b>COURT OF COMMON PLEAS OF</b>	:	
<b>LACKAWANNA COUNTY, <i>et al.</i>,</b>	:	
<b>Respondents</b>	:	

**MEMORANDUM**

Pending before the court is the report of Judge Martin C. Carlson, which recommends that the petitioner's pro se emergency petition for writ of habeas corpus, pursuant to [28 U.S.C. §2254](#), (Doc. 1), be dismissed without prejudice. (Doc. 2). Upon review, the report of Judge Carlson will be adopted in its entirety.

By way of relevant background, the petitioner filed the instant habeas petition dated October 15, 2018,<sup>1</sup> in which he essentially sought this court to intervene in his Lackawanna County criminal case that was scheduled for trial on October 15, 2018, and to interpret the state criminal statutes he was charged with violating and to make rulings in his case. Judge Carlson notes in his report that the petitioner was convicted of several of the charges on October 16, 2018, and that he is awaiting sentencing.

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<sup>1</sup>It was not actually filed with this court until October 16, 2018. (Doc. 1).

Judge Carlson gave preliminary consideration to the habeas petition and issued his report on October 18, 2018. Judge Carlson recommends that the petitioner's habeas petition be dismissed without prejudice since it is clear that the petitioner has failed to exhaust any of his state court remedies regarding his conviction. Judge Carlson also recommends that a certificate of appealability should not be issued.

No objections were filed to Judge Carlson's report and the time within which objections were due has expired.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31.

The court has reviewed the reasons presented by Judge Carlson for recommending that the petitioner's habeas petition be dismissed without prejudice. Because the court agrees with the sound reasoning that led Judge Carlson to the conclusions in his report and finds no clear error on the face

of the record, the court will adopt the report in its entirety.

Moreover, pursuant to [28 U.S.C. §2253\(c\)](#), unless a circuit justice or judge issues a certificate of appealability (“COA”), an appeal may not be taken from a final order in a proceeding under [28 U.S.C. §2254](#). A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. [28 U.S.C. §2253\(c\)\(2\)](#). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” [Miller-El v. Cockrell, 537 U.S. 322 \(2003\)](#). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” [Slack v. McDaniel, 529 U.S. 473, 484 \(2000\)](#). Here, jurists of reason would not find the disposition of this case debatable. Accordingly, no COA will issue. An appropriate order shall issue.

s/ *Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**Date: November 7, 2018**

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